



**European Commission Proposal for a  
Regulation amending (EU) No. 909/2014  
with regards to Settlement Discipline, cross-  
border provision of services, supervisory  
cooperation, provision of banking-type  
ancillary services and requirements for  
third-country Central Securities  
Depositories**

The International Securities Lending Association (ISLA) welcomes the opportunity to comment on the Proposal, amending Regulation EU No. 909/2014 – The Central Securities Depositories Regulation, with regards to rules surrounding the Settlement Discipline Regime, as well as supporting the Capital Market Union’s overall goal to develop a single EU capital market, with its core objective to increase settlement efficiency. In response to the proposal, ISLA would like to share the following feedback collected through discussion with our [members](#) who consist of both sell-side and buy-side firms.

The International Securities Lending Association is a leading non-profit industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. Its geographically diverse membership of over 180 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers. Working closely with the industry, as well as national, regional, and global regulators and policy makers, ISLA advocates for, amongst other things, the importance of securities lending to the broader financial services industry. It supports both the [Global Master Securities Lending Agreement](#) (GMSLA) legal framework, including the Title Transfer and Securities Interest over Collateral variants, as well as the periodical enforceability and security enforcement across global jurisdictions.

ISLA supports the proposed amendments to Article 7(2) and the addition of 7(14)a, especially considering that some settlement fails may be triggered by external events such as technical system failures at the CSD, and that it may be appropriate to not apply penalties to types of primary market or fund activity mentioned in recital (4). Since the entry into force of the Settlement Discipline Regime in February 2022, there have been a number of reported technical difficulties experienced by the CSD's, when applying penalties. There have also been numerous reconciliation issues found between the daily and monthly reporting provided by the CSD's, to date.

ISLA agree that the specific cases (apart from those already mentioned in recital (4)) to which the exclusions in Article 7(2) should apply, should be clarified in the delegated act. On this point, ISLA members expressed concern that fail chains not only consist of settlement activity between two trading parties, but also involve other types of settlement activity that is not attributed to a trading relationship. The exemption of non-trading parties from the penalty regime may therefore result in an unfair distribution of settlement fail penalties, and penalties should encourage efficient settlement across all transaction types, where appropriate.

ISLA also recommends that penalty rates should apply consistently across the same instruments, irrespective of trading location. The provision of different penalty rates for specific markets creates a market risk for participants where some elements of a transaction are executed on a trading venue, whilst others are OTC. Specifying varying penalty rates for specific legs of a transaction, creates unnecessary market risk for intermediaries.

ISLA supports the proposed approach outlined in 7(2)a, with the introduction of an Implementing Act that does not automatically introduce the use of Mandatory Buy-ins (MBIs) however, several challenges remain that must be addressed.

ISLA continues to advocate that MBIs could be severely damaging to the smooth functioning of capital markets, if not introduced in an effective manner.

With regards to condition (a), it is imperative that the Commission clarify what might constitute a ‘long-term continuous reduction of settlement fails’, and details how this assessment would be conducted. ISLA strongly advocate that the Commission continues to work alongside the market to determine the extent to which settlement efficiency has been improved and investigate the reasons behind such improvements, rather than working towards a distinct benchmark. ISLA considers it vital to allow a significant period for this assessment and development, assuming that any Implementing Act for MBI would also include a re-papering exercise for market participants, as and when they are applied.

With regards to condition (b), ISLA requests further details on how a comparison of the EU market to other jurisdictions (of comparable size and liquidity) would be conducted. For example, ISLA would like to know whether the comparison would be conducted across the market as a whole, or whether individual asset classes would be considered. ISLA would also note that this may not be an effective method to accurately assess the performance of EU settlement rates, noting the considerable differences between global market infrastructures.

ISLA advocates that should the above conditions outlined in 7(2)a be met, the Commission should consider re-calibrating the penalty rates as a first course of action, to assess whether this has a material impact to settlement efficiency in a given instrument type. A significant period should then be allowed for this recalibration to take effect before any assessment as to whether a MBI remains necessary. ISLA also recommends that the elements of article 7(2)a should be considered in a cumulative manner, as opposed to introducing MBIs if any of the conditions are met individually.

ISLA would also like to highlight the ongoing work being done by trade associations, to develop best practices that contribute to improving settlement efficiency, such as [auto-partialling](#) and guidance on tighter cut-off times for new loans and returns. ISLA continues to see the benefits of discussing market standards with regulators and market participants, and therefore request that the Commission works

alongside the market to determine how further development of best practices could improve settlement efficiency before MBIs are introduced.

ISLA would also like to note that at present, settlement efficiency is measured as of intended settlement date, and a buy-in will only resolve a failing transaction on business day 4 and 7. Settlement rates therefore may not be directly correlated to the buy-in process, as they are not being measured at the same point in time.

ISLA, in alignment with the broader industry, fully support the introduction of a pass-on mechanism under Article 7(3)a and welcome further detail in the Regulatory Technical Standards.

With regards to Article 7(4), ISLA advocates for the removal of the reference to ‘securities lending and repurchase agreements’ and requests derogation from MBIs for all Securities Financing Transactions (SFTs) regardless of the term duration, as this activity is typically employed to enhance settlement efficiency in cash markets, by allowing participants to borrow securities to meet settlement requirements on Intended Settlement Date. This view is supported by recent ISLA surveys showing an improvement in new loan settlement rates and the corresponding increase, by approximately 35%, of auto borrowing facilities. This effect is most noticeable in relation to sovereign debt activity.

It is important to note that SFTs differ considerably in nature and economic profile from outright sales and purchases; neither a buy-in or cash compensation payment makes economic sense for parties to an SFT, and does not restore them to their original position, had the trade settled on intended settlement date.

As previously advised, contractual remedies exist within our recognised Master Agreements that are designed to provide parties with the necessary optionality, in relation to failing transactions that occur. ISLA would welcome the opportunity to discuss this in greater detail with the Commission, as we believe that

imposing MBIs on SFTs, may inadvertently discourage the practice of securities lending which would have detrimental effects on market liquidity.

ISLA supports the introduction of Article 7(4) c & d.

ISLA are also supportive of the amendments to Article 7(6) to fix payment asymmetry. We would welcome further clarity on details regarding how this may occur within the level 2 Technical Standards.

ISLA further supports additional Article 7(13)a that allows the regulator to suspend the buy-in mechanism where deemed necessary.

Given the above challenges, ISLA welcomes further clarity and detail to be provided in the Technical Standards to accompany the new proposal for a revised Level 1 Text.

Further Considerations:

ISLA would like to note that in Article 7(10)c of Regulation EU No.909/2014, which has not been amended in the Proposal, continues to refer to the term 'participant' when referring to participants subject to paragraphs 3-8 of the MBI obligations. ISLA would recommend that this be amended to 'trading parties', with a consistent application throughout the text to ensure clarity.

ISLA fully supports the Commission's approach to improving settlement efficiency through the use of new technologies, such as the CSDR DLT Pilot. Whilst the CSDR cash penalty regime addresses settlement efficiency in the short-term, the complexity of markets and vast differences in operating models will continue to limit the extent to which settlement efficiency can be improved. The adoption of agreed market standards, enabled by distributed ledger technology, has the potential to solve many challenges.

ISLA would like to note that, alongside the International Capital Markets Association, the International Swaps & Derivatives Association and all of our members work on a standard data and functional lifecycle framework, is being actively undertaken through development of the [Common Domain Model \(CDM\)](#). These consensus driven standards will drive substantial reductions in reconciliation breaks, reporting mismatches and disputes over collateral and pricing, all of which currently contribute to today's settlement inefficiencies. Development of standards via the CDM, facilitate the adoption of distributed ledger technology and the associated mechanisms.